NORLIA BINTI SHUKRI v. UNIVERSITY OF MALAYA & ANOR.

[O.C.J. (Wan Hamzah J.) March 29, 1982]
[Kuala Lumpur – Originating Motion No. 132 of 1977]

Administrative Law – Certiorari – Decision of Minister of Education – Disciplinary proceedings against student residing in residential hostel – Appeal to Minister – Punishment enhanced by Minister – University of Malaya (Discipline of Students) Rules, 1975, rule 45 – Universities and University Colleges Act, 1971, s. 16B(5).

In this case the applicant was a student of the University of Malaya and residing in one of the Residential Hostels of the University. She was asked to appear before a disciplinary authority of the University for alleged breaches of certain provisions of the University of Malaya (Discipline of Students) Rules, 1975. After a hearing, the disciplinary authority found her guilty and imposed upon her the following punishments (a) warning that offences be not repeated; (b) fine of $25/- and (c) not allowed to stay in the University Hostel; (d) Not allowed to enter the University campus till September 19, 1977. The applicant appealed to the Minister. The Minister made an order that the applicant be not allowed to continue her studies in the University until the 1978/1979 session, the order being in addition to the punishments given by the disciplinary authority. By mistake no committee was appointed under section 16B(5) of the Universities and University Colleges Act, 1971 to make recommendations before the Minister made his decision on the appeal. This however was subsequently done and on receiving the recommendations from the committee the Minister made another order (1) that the applicant be not allowed to enter the University during the 1977/1978 session; (2) that she move out of the hostel and be not allowed to stay in any hostel of the University; (3) that she be warned not to repeat the offence; (4) the fine imposed be set aside. The applicant applied for *certiorari* on the grounds that the disciplinary committee had wrongly refused her request to call a witness and that the Minister had wrongly made the order to enhance the punishment which he had no power to do.

Held: (1) on the evidence and on the record of hearing no request was made by the applicant to call the witness;

(2) the powers of the Minister are wide and the decisions which the Minister may make on appeal include enhancing the punishment if he deems enhancement fit and proper.

ORIGINATING MOTION.

Harpal Singh for the applicant.

C.V. Dass for the 1st respondent.

Phang Ah Hee, Federal Counsel, for the 2nd respondent.

Cur. Adv. Vult.

Wan Hamzah J.: The applicant prays for leave to apply for an order of certiorari to remove into this court and quash the decision of the Minister of Education against her.

The Applicant was a student of the University of Malaya and residing in one of the Residential Colleges of the University when on August 20, 1977 she was asked to appear before the disciplinary authority of the University for alleged breaches of certain provisions of the University of Malaya (Discipline of Students) Rules 1975. After hearing, the disciplinary authority found her guilty and imposed upon her the following punishments:–

1. Warning that the same offences be not repeated;
2. Fine of $25.00 to be paid within 45 days;
3. Not allowed to stay in the University hostel (Asrama Kedua);
4. Not allowed to enter the University campus until September 19, 1977.

The Appellant appealed to the Minister of Education (the Second Respondent) against the decision of the disciplinary authority. On September 13, 1977 the Minister made an order that the Applicant be not allowed to continue her studies in the University until the 1978/79 session. This order was in addition to the punishments given by the disciplinary authority. There was an error in not appointing a committee under section 16B(5) of the University and University Colleges Act 1971 and calling for its recommendations before making the decision on the appeal. Therefore subsequently this was done, and on receiving the recommendations from the committee the Minister issued another order as follows to replace the previous order:–

1. Not allowed to enter the University during the 1977/78 session until one day before the beginning of the 1978/79 session;
2. To move out of Asrama Kedua and not allowed to stay in any hostel of the University;
3. To be warned not to repeat the offensive incident;
4. The fine imposed by the disciplinary authority is set aside.

The Applicant was allowed to continue her studies as from the next following session. She brings this motion on the following grounds:–

(a) The Disciplinary authority had wrongly refused her request to call a witness named Nik Norihan Thani;

(b) The Minister had wrongly made the order to enhance the punishment which he had no power to do.

The Respondents deny that she made a request to the disciplinary authority to call Nik Norihan Thani as a witness. The record of hearing by the disciplinary authority was produced to the court and it does not show that such request was made. The Applicant did not produce any document to the court to show that when she appealed to the Minister she complained against the disciplinary authority's refusal to hear Nik Norihan Thani's evidence. I am therefore unable to find that such request was made by the Applicant.

As to the second ground, I find nothing in the law to prevent the Minister from enhancing the punishment. Section 16B(5) provides –

"Where the Minister does not summarily reject an appeal under subsection (4), he shall appoint a committee of two or more persons, from within or without the University, to consider the appeal and make its recommendations to him, and, upon receiving such recommendations, the Minister may give such decision on the appeal as he deems fit and proper."

In my opinion these provisions are wide and the decisions which the Minister may make under the provisions include enhancing the punishment if he deems enhancement fit and proper. It is also relevant to refer to rule 45 of the University of Malaya (Discipline of Students) Rules, 1975, which provides –

"A student who is found guilty of a disciplinary offence shall be liable to any one or any appropriate combination of two or more of the following punishments:

(a) reprimand;

(b) a fine not exceeding two hundred ringgit;

(c) suspension from any or all of the facilities of the University for a specified period;

(d) exclusion from any part of the University for a specified period;

(e) expulsion from the University."

The Minister's order that the Applicant be not allowed to enter the University during the 1977/78 session was in accordance with item (d) above. The Minister's order that the Applicant should move out of the hostel and not to stay in any of the University hostels was in accordance with item (c) above.

I would also like to add that the Minister's order dated September 13, 1977 was not valid since no committee had been appointed under section 16B(5) to make recommendations to the Minister. Therefore there was nothing to prevent the Minister from appointing a committee subsequently, to consider its recommendations and to make a new valid order, as he subsequently did.

This application is dismissed. I make no order as to costs.

Application dismissed.

Solicitors: *Atma Singh Veriah & Co.; Shook Lin & Bok.*

SOUTH JOHORE OMNIBUS SDN. BHD. v. DAMAI EKSPRES

[O.C.J. (Yusoff Mohamed J.) March 31, 1982]

[Johore Bahru – Civil Suit No. 29 of 1982]

Practice & Procedure – Application for interlocutory injunction to restrain bus company from operating in excess of 2 trips daily – Action frivolous.

Practice & Procedure – Public nuisance – Remedy allowed only in relator action.

The plaintiff sought for an interlocutory injunction to restrain the defendants' company from operating express bus service between Johore Bahru and Air Hitam in excess of 2 trips per day and in non-compliance with the conditions of the licence granted to them by the Licensing Board. The plaintiffs contended that the defendants were in breach of their licence and as a result the plaintiffs suffered loss of income.

Held, dismissing the plaintiffs' claim: the remedy sought by the plaintiffs is to prevent a breach of the law which is a public wrong in which only the Attorney-General as Public Prosecutor could sue on behalf of the public. The Courts have no jurisdiction to entertain such claim by private individuals who have not suffered damage.

Cases referred to:–

(1) *Gouriet* v. *U.P.W.* [1978] A.C. 435, 494.
(2) *Majlis Perbandaran Pulau Pinang* v. *Boey Siew Than & Ors.* [1979] 2 M.L.J. 127.

CIVIL SUIT.

David Ng Kim Seng for the plaintiffs.
Abbas Ismail Rowland for the defendants.

Cur. Adv. Vult.

Yusoff Mohamed J.: This is an application for an interlocutory injunction to restrain the defen-